

AMENDED IN ASSEMBLY JUNE 26, 2012
AMENDED IN SENATE JANUARY 11, 2012
AMENDED IN SENATE JANUARY 4, 2012
AMENDED IN SENATE MAY 31, 2011
AMENDED IN SENATE MAY 10, 2011
AMENDED IN SENATE APRIL 12, 2011

SENATE BILL

No. 708

Introduced by Senator Corbett
(Principal coauthor: ~~Assembly Member Beall~~)
(**Coauthor: Senator DeSaulnier**)
(Coauthor: ~~Assembly Member Bonilla~~)

February 18, 2011

An act to amend ~~Sections 2923.5, 2923.6, 2924.8, and 2929.3 of the Civil Code, and to amend Section 1161b 11108 of the Commercial Code of Civil Procedure, relating to mortgages~~ *funds transfers*.

LEGISLATIVE COUNSEL'S DIGEST

SB 708, as amended, Corbett. ~~Residential mortgage loans; foreclosure procedures.~~ *Funds transfers.*

Existing provisions of the Commercial Code governing certain funds transfers, cited as the Uniform Commercial Code - Funds Transfers, provide, among other provisions, that a funds transfer is completed by acceptance by the beneficiary's bank of a payment order for the benefit of the beneficiary of the originator's payment order. Existing law excludes from the provisions of the Uniform Commercial Code - Funds

Transfers those funds transfers governed by the federal Electronic Fund Transfer Act of 1978.

This bill would make the provisions of the Uniform Commercial Code - Funds Transfers applicable to a remittance transfer, as defined, but would continue to exempt a remittance transfer that is an electronic fund transfer, as defined under the federal act.

~~Upon a breach of the obligation of a mortgage or transfer of an interest in property, existing law requires the trustee, mortgagee, or beneficiary to comply with certain procedures, including recording a notice of default, and mailing the notice of default to the mortgagor or trustor. Existing law, until January 1, 2013, imposes additional requirements on mortgagees, trustees, beneficiaries, and authorized agents for residential mortgage loans made from January 1, 2003, to December 31, 2007, inclusive, including prohibiting the filing of a notice of default on a mortgage or deed of trust secured by owner-occupied real property until 30 days after the borrower is contacted or 30 days after satisfying due diligence requirements to contact the borrower, as specified. Existing law, until January 1, 2013, gives a tenant or subtenant in possession of a rental housing unit, at the time the property is sold in foreclosure, 60 days to remove himself or herself from the property. Existing law requires a trustee or authorized representative to post a notice on the property to be sold that contains specified information relating to the rights of the resident of the property, and makes it a crime to tear down the notice within 72 hours of the time the notice is posted.~~

~~This bill would extend the operation of all of the provisions specified above to January 1, 2018. The bill would also revise the notice relating to the rights of the resident.~~

~~By extending the operative period of a crime, the bill would impose a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: *yes-no*.
State-mandated local program: *yes-no*.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 11108 of the Commercial Code is*
2 *amended to read:*

3 11108. ~~This~~ *(a) Except as provided in subdivision (b), this*
4 division does not apply to a funds transfer any part of which is
5 governed by the Electronic Fund Transfer Act of 1978 (Title XX,
6 Public Law 95-630, 92 Stat. 3728, 15 U.S.C. Sec. 1693 et seq.) as
7 amended from time to time.

8 *(b) This division shall apply to a funds transfer that is a*
9 remittance transfer as defined in Section 1693o-1 of Title 15 of
10 the United States Code, unless the remittance transfer is an
11 electronic fund transfer as defined in Section 1693a of Title 15 of
12 the United States Code.

13 *(c) In a funds transfer pursuant to this division, if there is an*
14 inconsistency between the applicable provision of this division
15 and the federal act, the applicable provisions of the federal act
16 shall control to the extent of the inconsistency.

17 ~~SECTION 1. Section 2923.5 of the Civil Code is amended to~~
18 ~~read:~~

19 ~~2923.5. (a) (1) A mortgagee, trustee, beneficiary, or authorized~~
20 ~~agent may not file a notice of default pursuant to Section 2924~~
21 ~~until 30 days after initial contact is made as required by paragraph~~
22 ~~(2) or 30 days after satisfying the due diligence requirements as~~
23 ~~described in subdivision (g).~~

24 ~~(2) A mortgagee, beneficiary, or authorized agent shall contact~~
25 ~~the borrower in person or by telephone in order to assess the~~
26 ~~borrower's financial situation and explore options for the borrower~~
27 ~~to avoid foreclosure. During the initial contact, the mortgagee,~~
28 ~~beneficiary, or authorized agent shall advise the borrower that he~~
29 ~~or she has the right to request a subsequent meeting and, if~~
30 ~~requested, the mortgagee, beneficiary, or authorized agent shall~~
31 ~~schedule the meeting to occur within 14 days. The assessment of~~
32 ~~the borrower's financial situation and discussion of options may~~
33 ~~occur during the first contact, or at the subsequent meeting~~
34 ~~scheduled for that purpose. In either case, the borrower shall be~~
35 ~~provided the toll-free telephone number made available by the~~
36 ~~United States Department of Housing and Urban Development~~
37 ~~(HUD) to find a HUD-certified housing counseling agency. Any~~
38 ~~meeting may occur telephonically.~~

~~(b) A notice of default filed pursuant to Section 2924 shall include a declaration that the mortgagee, beneficiary, or authorized agent has contacted the borrower, has tried with due diligence to contact the borrower as required by this section, or that no contact was required pursuant to subdivision (h).~~

~~(c) If a mortgagee, trustee, beneficiary, or authorized agent had already filed the notice of default prior to the enactment of this section and did not subsequently file a notice of rescission, then the mortgagee, trustee, beneficiary, or authorized agent shall, as part of the notice of sale filed pursuant to Section 2924f, include a declaration that either:~~

~~(1) States that the borrower was contacted to assess the borrower's financial situation and to explore options for the borrower to avoid foreclosure.~~

~~(2) Lists the efforts made, if any, to contact the borrower in the event no contact was made.~~

~~(d) A mortgagee's, beneficiary's, or authorized agent's loss mitigation personnel may participate by telephone during any contact required by this section.~~

~~(e) For purposes of this section, a "borrower" shall include a mortgagor or trustor.~~

~~(f) A borrower may designate, with consent given in writing, a HUD-certified housing counseling agency, attorney, or other advisor to discuss with the mortgagee, beneficiary, or authorized agent, on the borrower's behalf, the borrower's financial situation and options for the borrower to avoid foreclosure. That contact made at the direction of the borrower shall satisfy the contact requirements of paragraph (2) of subdivision (a). Any loan modification or workout plan offered at the meeting by the mortgagee, beneficiary, or authorized agent is subject to approval by the borrower.~~

~~(g) A notice of default may be filed pursuant to Section 2924 when a mortgagee, beneficiary, or authorized agent has not contacted a borrower as required by paragraph (2) of subdivision (a) provided that the failure to contact the borrower occurred despite the due diligence of the mortgagee, beneficiary, or authorized agent. For purposes of this section, "due diligence" shall require and mean all of the following:~~

~~(1) A mortgagee, beneficiary, or authorized agent shall first attempt to contact a borrower by sending a first-class letter that~~

1 includes the toll-free telephone number made available by HUD
2 to find a HUD-certified housing counseling agency.

3 ~~(2) (A) After the letter has been sent, the mortgagee,~~
4 ~~beneficiary, or authorized agent shall attempt to contact the~~
5 ~~borrower by telephone at least three times at different hours and~~
6 ~~on different days. Telephone calls shall be made to the primary~~
7 ~~telephone number on file.~~

8 ~~(B) A mortgagee, beneficiary, or authorized agent may attempt~~
9 ~~to contact a borrower using an automated system to dial borrowers;~~
10 ~~provided that, if the telephone call is answered, the call is~~
11 ~~connected to a live representative of the mortgagee, beneficiary,~~
12 ~~or authorized agent.~~

13 ~~(C) A mortgagee, beneficiary, or authorized agent satisfies the~~
14 ~~telephone contact requirements of this paragraph if it determines,~~
15 ~~after attempting contact pursuant to this paragraph, that the~~
16 ~~borrower's primary telephone number and secondary telephone~~
17 ~~number or numbers on file, if any, have been disconnected.~~

18 ~~(3) If the borrower does not respond within two weeks after the~~
19 ~~telephone call requirements of paragraph (2) have been satisfied,~~
20 ~~the mortgagee, beneficiary, or authorized agent shall then send a~~
21 ~~certified letter, with return receipt requested.~~

22 ~~(4) The mortgagee, beneficiary, or authorized agent shall provide~~
23 ~~a means for the borrower to contact it in a timely manner, including~~
24 ~~a toll-free telephone number that will provide access to a live~~
25 ~~representative during business hours.~~

26 ~~(5) The mortgagee, beneficiary, or authorized agent has posted~~
27 ~~a prominent link on the homepage of its Internet Web site, if any,~~
28 ~~to the following information:~~

29 ~~(A) Options that may be available to borrowers who are unable~~
30 ~~to afford their mortgage payments and who wish to avoid~~
31 ~~foreclosure, and instructions to borrowers advising them on steps~~
32 ~~to take to explore those options.~~

33 ~~(B) A list of financial documents borrowers should collect and~~
34 ~~be prepared to present to the mortgagee, beneficiary, or authorized~~
35 ~~agent when discussing options for avoiding foreclosure.~~

36 ~~(C) A toll-free telephone number for borrowers who wish to~~
37 ~~discuss options for avoiding foreclosure with their mortgagee,~~
38 ~~beneficiary, or authorized agent.~~

39 ~~(D) The toll-free telephone number made available by HUD to~~
40 ~~find a HUD-certified housing counseling agency.~~

~~(h) Subdivisions (a), (c), and (g) shall not apply if any of the following occurs:~~

~~(1) The borrower has surrendered the property as evidenced by either a letter confirming the surrender or delivery of the keys to the property to the mortgagee, trustee, beneficiary, or authorized agent.~~

~~(2) The borrower has contracted with an organization, person, or entity whose primary business is advising people who have decided to leave their homes on how to extend the foreclosure process and avoid their contractual obligations to mortgagees or beneficiaries.~~

~~(3) A case has been filed by the borrower under Chapter 7, 11, 12, or 13 of Title 11 of the United States Code and the bankruptcy court has not entered an order closing or dismissing the bankruptcy case, or granting relief from a stay of foreclosure.~~

~~(i) This section shall apply only to mortgages or deeds of trust recorded from January 1, 2003, to December 31, 2007, inclusive, that are secured by owner-occupied residential real property containing no more than four dwelling units. For purposes of this subdivision, “owner-occupied” means that the residence is the principal residence of the borrower as indicated to the lender in loan documents.~~

~~(j) This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.~~

~~SEC. 2.— Section 2923.6 of the Civil Code is amended to read:~~

~~2923.6.— (a) The Legislature finds and declares that any duty servicers may have to maximize net present value under their pooling and servicing agreements is owed to all parties in a loan pool, or to all investors under a pooling and servicing agreement, not to any particular party in the loan pool or investor under a pooling and servicing agreement, and that a servicer acts in the best interests of all parties to the loan pool or investors in the pooling and servicing agreement if it agrees to or implements a loan modification or workout plan for which both of the following apply:~~

~~(1) The loan is in payment default, or payment default is reasonably foreseeable.~~

1 ~~(2) Anticipated recovery under the loan modification or workout~~
2 ~~plan exceeds the anticipated recovery through foreclosure on a net~~
3 ~~present value basis.~~

4 ~~(b) It is the intent of the Legislature that the mortgagee,~~
5 ~~beneficiary, or authorized agent offer the borrower a loan~~
6 ~~modification or workout plan if such a modification or plan is~~
7 ~~consistent with its contractual or other authority.~~

8 ~~(c) This section shall remain in effect only until January 1, 2018,~~
9 ~~and as of that date is repealed, unless a later enacted statute, that~~
10 ~~is enacted before January 1, 2018, deletes or extends that date.~~

11 ~~SEC. 3. Section 2924.8 of the Civil Code is amended to read:~~

12 ~~2924.8. (a) Upon posting a notice of sale pursuant to Section~~
13 ~~2924f, a trustee or authorized agent shall also post the following~~
14 ~~notice, in the manner required for posting the notice of sale on the~~
15 ~~property to be sold, and a mortgagee, trustee, beneficiary, or~~
16 ~~authorized agent, concurrently with the mailing of the notice of~~
17 ~~sale pursuant to Section 2924b, shall send by first-class mail in an~~
18 ~~envelope addressed to the "Resident of property subject to~~
19 ~~foreclosure sale" the following notice in English and the languages~~
20 ~~described in Section 1632:~~

21
22 ~~"You are not required to move at this time. However, the~~
23 ~~foreclosure process has begun on this property, which may affect~~
24 ~~your right to continue to live in this property in the future. Twenty~~
25 ~~days or more after the date of this notice, this property may be sold~~
26 ~~at foreclosure. If you are renting this property, your tenancy may~~
27 ~~continue after the foreclosure sale. In order for the new owner to~~
28 ~~evict you, the new owner must provide you with at least 60 days~~
29 ~~written eviction notice or 90 days if required by any other provision~~
30 ~~of state or federal law. However, some laws may prohibit an~~
31 ~~eviction. You should contact a lawyer or housing counseling~~
32 ~~agency to discuss any rights you may have. If you do not know an~~
33 ~~attorney, you may want to call an attorney referral service. If you~~
34 ~~cannot afford an attorney, you may be eligible for free legal~~
35 ~~services from a nonprofit legal services program."~~

36
37 ~~(b) It shall be an infraction to tear down the notice described in~~
38 ~~subdivision (a) within 72 hours of posting. Violators shall be~~
39 ~~subject to a fine of one hundred dollars (\$100).~~

1 ~~(e) A state government entity shall make available translations~~
2 ~~of the notice described in subdivision (a) which may be used by a~~
3 ~~mortgagee, trustee, beneficiary, or authorized agent to satisfy the~~
4 ~~requirements of this section.~~

5 ~~(d) This section shall only apply to loans secured by residential~~
6 ~~real property and if the billing address for the mortgage note is~~
7 ~~different than the property address.~~

8 ~~(e) This section shall remain in effect only until January 1, 2018,~~
9 ~~and as of that date is repealed, unless a later enacted statute, that~~
10 ~~is enacted before January 1, 2018, deletes or extends that date.~~

11 SEC. 4. Section 2929.3 of the Civil Code is amended to read:

12 2929.3. ~~(a) (1) A legal owner shall maintain vacant residential~~
13 ~~property purchased by that owner at a foreclosure sale, or acquired~~
14 ~~by that owner through foreclosure under a mortgage or deed of~~
15 ~~trust. A governmental entity may impose a civil fine of up to one~~
16 ~~thousand dollars (\$1,000) per day for a violation. If the~~
17 ~~governmental entity chooses to impose a fine pursuant to this~~
18 ~~section, it shall give notice of the alleged violation, including a~~
19 ~~description of the conditions that gave rise to the allegation, and~~
20 ~~notice of the entity's intent to assess a civil fine if action to correct~~
21 ~~the violation is not commenced within a period of not less than 14~~
22 ~~days and completed within a period of not less than 30 days. The~~
23 ~~notice shall be mailed to the address provided in the deed or other~~
24 ~~instrument as specified in subdivision (a) of Section 27321.5 of~~
25 ~~the Government Code, or, if none, to the return address provided~~
26 ~~on the deed or other instrument.~~

27 ~~(2) The governmental entity shall provide a period of not less~~
28 ~~than 30 days for the legal owner to remedy the violation prior to~~
29 ~~imposing a civil fine and shall allow for a hearing and opportunity~~
30 ~~to contest any fine imposed. In determining the amount of the fine,~~
31 ~~the governmental entity shall take into consideration any timely~~
32 ~~and good faith efforts by the legal owner to remedy the violation.~~
33 ~~The maximum civil fine authorized by this section is one thousand~~
34 ~~dollars (\$1,000) for each day that the owner fails to maintain the~~
35 ~~property, commencing on the day following the expiration of the~~
36 ~~period to remedy the violation established by the governmental~~
37 ~~entity.~~

38 ~~(3) Subject to the provisions of this section, a governmental~~
39 ~~entity may establish different compliance periods for different~~

1 conditions on the same property in the notice of alleged violation
2 mailed to the legal owner.

3 (b) ~~For purposes of this section, “failure to maintain” means~~
4 ~~failure to care for the exterior of the property, including, but not~~
5 ~~limited to, permitting excessive foliage growth that diminishes the~~
6 ~~value of surrounding properties, failing to take action to prevent~~
7 ~~trespassers or squatters from remaining on the property, or failing~~
8 ~~to take action to prevent mosquito larvae from growing in standing~~
9 ~~water or other conditions that create a public nuisance.~~

10 (c) ~~Notwithstanding subdivisions (a) and (b), a governmental~~
11 ~~entity may provide less than 30 days’ notice to remedy a condition~~
12 ~~before imposing a civil fine if the entity determines that a specific~~
13 ~~condition of the property threatens public health or safety and~~
14 ~~provided that notice of that determination and time for compliance~~
15 ~~is given.~~

16 (d) ~~Fines and penalties collected pursuant to this section shall~~
17 ~~be directed to local nuisance abatement programs.~~

18 (e) ~~A governmental entity may not impose fines on a legal owner~~
19 ~~under both this section and a local ordinance.~~

20 (f) ~~These provisions shall not preempt any local ordinance.~~

21 (g) ~~This section shall only apply to residential real property.~~

22 (h) ~~The rights and remedies provided in this section are~~
23 ~~cumulative and in addition to any other rights and remedies~~
24 ~~provided by law.~~

25 (i) ~~This section shall remain in effect only until January 1, 2018,~~
26 ~~and as of that date is repealed, unless a later enacted statute, that~~
27 ~~is enacted before January 1, 2018, deletes or extends that date.~~

28 SEC. 5. ~~Section 1161b of the Code of Civil Procedure is~~
29 ~~amended to read:~~

30 1161b. ~~(a) Notwithstanding Section 1161a, a tenant or~~
31 ~~subtenant in possession of a rental housing unit at the time the~~
32 ~~property is sold in foreclosure shall be given 60 days’ written~~
33 ~~notice to quit pursuant to Section 1162 before the tenant or~~
34 ~~subtenant may be removed from the property as prescribed in this~~
35 ~~chapter.~~

36 (b) ~~This section shall not apply if any party to the note remains~~
37 ~~in the property as a tenant, subtenant, or occupant.~~

38 (c) ~~This section shall remain in effect only until January 1, 2018,~~
39 ~~and as of that date is repealed, unless a later enacted statute, that~~
40 ~~is enacted before January 1, 2018, deletes or extends that date.~~

1 ~~SEC. 6.—No reimbursement is required by this act pursuant to~~
2 ~~Section 6 of Article XIII B of the California Constitution because~~
3 ~~the only costs that may be incurred by a local agency or school~~
4 ~~district will be incurred because this act creates a new crime or~~
5 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
6 ~~for a crime or infraction, within the meaning of Section 17556 of~~
7 ~~the Government Code, or changes the definition of a crime within~~
8 ~~the meaning of Section 6 of Article XIII B of the California~~
9 ~~Constitution.~~

O